IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10412 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HANIF NURMOHAMAD JUNEJA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/03/2000

ORAL JUDGEMENT

1. Commissioner of Police, Rajkot City, Rajkot, passed an order on October 21, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Hanif Noormohamad Juneja under

the provisions of the said Act.

2. The detaining authority considered four offences registered against the detenu and also considered statements of two witnesses, namely, Jethabhai Popatbhai and Tabubhai Merubhai and, came to conclusion that the detenu is a dangerous person as defined under the provisions of the PASA Act. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only efficacious remedy that can be resorted to, as compared to other less drastic remedies.

3. The petitioner has raised many contentions in this petition. But, Ms. Patel has restricted her arguments to the ground of non-application of mind on part of the detaining authority or consideration of irrelevant factors for quashing the order of detention. She submitted that the detaining authority has considered the possibility of resorting to Section 57 of the Bombay Police Act which, in fact, is not relevant because all the cases registered against the detenu are pending trial and for initiating proceedings under Section 57, conviction is necessary. She, therefore, submitted the detaining authority has passed the order without application of mind. The order, therefore, is vitiated and the same may be quashed and set aside by allowing this petition.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. He submitted that the detaining authority has considered all relevant aspects, including possibility of resorting to Section 57, which cannot be considered as irrelevant and, therefore, the petition may be dismissed.

5. The petitioner is branded as a dangerous person. The offences registered against him are under Indian Penal Code. The detaining authority has considered possibility of resorting to proceedings under Section 56 or 57 of the Bombay Police Act. If the provision of Section 57 of Bombay Police Act is seen, in such cases Section 57(a) will be applicable, which provides for a conviction under Chapter XII, XVI or XVII of Indian Penal Code. Against this, if the grounds of detention are seen, the detaining authority has observed that, for taking action under Section 57, two convictions are required, which reflects non-application of mind on part of the detaining authority while considering this provision. Even if it is considered that provisions of Section 57(b) and (c) are considered by the detaining

authority, then also there is non-application of mind since they call for convictions under Bombay Beggars Act,1945 or under the Bombay Prevention of Prostitution Act, 1923 or the Saurashtra Prevention of Prostitution Act,1952 or the Hyderabad Suppression of Immoral Traffic Act, 1952 or the Madhya Pradesh Suppression of Immoral Traffic Act, 1953 or the Suppression of Immoral Traffic in women and Girls Act, 1956 or Bombay Prohibition Act, 1949 or Bombay Prevention of Gambling Act, 1887, etc., which is not the present case. Thus, viewing it from any angle, this reflects of non-application of mind on part of the detaining authority by considering the possibility of resorting to proceedings under Section 57 of the Bombay Police Act. This would vitiate the order of detention and the order, therefore, will have to be quashed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated October 21, 1999 is, hereby, quashed. The detenu-Hanif Noormohmad Juneja is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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